

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES

PAWTUXET RIVER AUTHORITY BOND FUND
Nine Million Dollar Bond Issue

Rules and Regulations for the Grant Program for
Municipalities within the Pawtuxet River Watershed for
Planning, Engineering and Construction of
Facilities and Activities to Upgrade the Water
Quality of the Pawtuxet River

10 April 2001

AUTHORITY: Regulations adopted pursuant to Chapters
46-12, 42-17.1 and 42-35 of the General Laws
of Rhode Island of 1956, as amended and Article 2, Section 1 of Public laws
Chapter 90-434

PAWTUXET RIVER AUTHORITY BOND FUND

Rules and Regulations

Table of Contents

		Page
Section 1	Purpose	1
Section 2	Authority	1
Section 3	Severability	1
Section 4	Applicability	1
Section 5	Definitions	2
Section 6	Goals	4
Section 7	Available Funds	4
Section 8	Eligibility Requirements	5
Section 9	Procurement Process	8
Section 10	Payments	12
Section 11	Non-Compliance	13
Section 12	Termination of the Fund	13

1.00 PURPOSE – The purpose of these Regulations is to implement ARTICLE 2 SECTION 1, “Relating to the Narragansett Bay Water Quality Management District Commission Fund” of Rhode Island Public Laws Chapter 90-434, AN ACT AUTHORIZING THE STATE OF RHODE ISLAND TO ISSUE GENERAL OBLIGATION BONDS AND NOTES ON THE AMOUNT NOT TO EXCEED \$ 166,895,540. FOR THE PURPOSE OF CAPITAL DEVELOPMENT. The purpose of this section of this law was to transfer \$9,000,000 from the Narragansett Bay Water Quality Management District Commission to the Pawtuxet River District Commission. In March of 1998 the Rhode Island General Assembly amended Section 46-24-9 of the General Laws entitled” Pawtuxet River Authority.” This Legislation transferred all of the powers previously given to the Pawtuxet River District Commission to the Pawtuxet River Authority. By Resolution on June 7, 1999, the Pawtuxet River Authority conferred any responsibly to govern the administrative and technical review for the \$9,000,000 proceeds of the state’s general obligation bonds to the Department of Environmental Management. The Office of Water Resources of the Rhode Island Department of Environmental Management will administer the grant program.

2.00 AUTHORITY – These regulations are adopted pursuant to Chapters 46-12 and 42-17.1 of the General Laws of Rhode Island of 1956, as amended. These regulations are being promulgated in accordance with Chapter 42-35 of the General Laws of Rhode Island

3.00 SEVERABILITY – If any of these regulations or the application thereof to any municipality or circumstances is held invalid by a court of competent jurisdiction, the remainder of the regulations shall not be affected thereby. The invalidity of any section or sections shall not affect the validity of the remainder of these regulations.

4.00 APPLICABILITY – The grants provided under these regulations are applicable only to the municipalities of Cranston, Warwick and West Warwick.

5.00 DEFINITIONS – Unless the context specifically indicates otherwise, the meaning of terms used in these Rules and Regulations shall be as follows:

Architectural/Engineering (A/E) Services – Consultations, investigations, reports, or services for planning, design-type, or construction projects within the scope of the practice of architecture or professional engineering as defined by the State of Rhode Island.

Clean Water Act (CWA) – The Federal law enacted under 33 U. S. C. Section 1251 et. seq. as amended.

Consent Decree-Consent Decree and Judgment issued between RIDEM and the Town of West Warwick C. A. 90-6679 as amended, RIDEM and the City of Cranston C. A. No. .90-6678 as amended and RIDEM and the City of Warwick C. A. 90-6677 as amended

Construction – Erection, building, alteration, remodeling, improvements, or extension of buildings, structures or other property.

Design – Preparation of detailed plans and specifications (includes construction drawings, specifications, other contract documents).

Design-Build – a method of project delivery in which the owner contracts with a single entity to take responsibility for the design and construction of a project

Design-Bid-Build-the traditional delivery method where design and construction are sequential and contracted with two contracts and two contractors.

Director – The Director of the Rhode Island Department of Environmental Management or his or her designee.

EPA-The United States Environmental Protection Agency.

Engineering Services During Construction – the scope of work will generally include:

1. Those applicable services normally associated with engineering supervision and inspection during construction (e.g. resident inspection, interpretation of plans and specifications, resolution of technical problems, preparation of estimates of work in place, review of claims, shop drawings and change orders, etc.); and
2. Preparation and implementation of a final plan of operation, including the preparation of an operation and maintenance (O&M) manual.

Department or DEM – The Department of Environmental Management of the State of Rhode Island.

Individual Sewage Disposal System (ISDS) – Any system of piping, tanks, disposal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat and/or dispose of sanitary sewage by means other than discharge into a public sewage collection system.

Planning – (Facilities Planning) – All planning and studies necessary to meet the facility planning requirements of the State Clean Water Act, Rhode Island General Law 46-12, and other applicable Federal and Rhode Island State Regulations promulgated to implement the Federal Clean Water Act. A Facilities Plan investigates, identifies, and forecasts needs. A full range of alternatives to address those needs is evaluated based on various criteria including cost effectiveness over the life of the project and environmental impact. Based upon the evaluation, an alternative is recommended and an environmental assessment of the alternative is performed. A final Facilities Plan will contain a description of the total recommended project, preliminary engineering data, costs and scheduling information on the design and construction of the project.

Privatization – the disposition or transfer of an infrastructure asset, by long-term lease, from a state or local government to a private party.

The leasee may be responsible for any or all of the following depending on the form of the agreement; planning, design, financing, construction of any planned or required system improvements, testing, operating and maintenance of the asset.

Services Agreements or Contracts – all types of agreements, including grants and orders, for planning, design, construction or operation of wastewater treatment facilities including awards; contracts of a fixed-price, cost, cost-plus-a-fee, or incentive type; contracts provided for the issuance of job or task orders; leases; letter contracts, purchase orders, and construction.

Service Firm-any provider of operation, planning, design, construction or any combination of them.

Wastewater Treatment Facility – Any equipment, devices and systems for preventing, abating, reducing, storing, conveying, treating, separating, recycling, reclaiming, or disposing of wastewater from domestic, commercial and industrial sources or any combinations of such, excluding Individual Sewage Disposal Systems.

6.00 GOAL – The goal of the Fund is to provide financial assistance to the three Pawtuxet municipalities of Cranston, Warwick and West Warwick to address water quality problems of the Pawtuxet River and meet the Rhode Island Pollutant Discharge Elimination System permit limitations.

7.00 AVAILABLE FUNDS – Up to nine million dollars (\$9,000,000.00) is to be allocated to the Rhode Island Department of Environmental Management to be available for grants to the three Pawtuxet municipalities of Cranston, Warwick and West Warwick for ninety percent (90%) of the eligible costs incurred for the

planning, design and construction of advanced wastewater treatment facilities and associated water pollution control actions and construction activities to improve water quality within the Pawtuxet River Watershed. Certification that the ten percent (10%) local share of the project cost is available shall be required for the receipt of state grant funds. The municipalities can not use any other state grant funds for their local match of the ten percent (10%) share.

8.00 ELIGIBILITY REQUIREMENTS

- A. Request for Proposals (RFP) for Facilities Planning, Design, Design –Build and Privatization Services Agreements must be reviewed and accepted by DEM and, when required, by the EPA.
- B. Services Agreements must meet all applicable state and federal requirements. The Department of Environmental Management will review and reserves the right to require amendments to the scope of services for all services agreements, and subagreements in excess of ten thousand dollars (\$10,000.00) to meet all applicable state and federal requirements. Specific contract provisions that are required include the following:
 - 1. General – Each services agreement, and subagreement in excess of ten thousand dollars (\$10,000.00) must include provisions defining a sound and complete agreement, including but not limited to:
 - (a) Nature, scope and extent of work to be performed;
 - (b) Time frame for performance;
 - (c) Total cost of the services agreement including cost estimate, which indicates the estimated man-hours for each Task and the direct cost, indirect cost, overhead, and profit separately. The overhead rate must be documented

by a recent audit performed by a federal or state agency;
and

(d) Payment provisions.

2. Appropriate “Model subagreement clauses” as stipulated in Federal Regulations 40 CFR Part 33; Procurement Under Assistance Agreements, Subpart F, para. 33.1030.
3. Time of Performance provision which will indicate the scheduled completion of all work, and all specific milestones, such as submittal of draft reports, final reports, etc., as required by the Consent Decree.

In addition, each agreement must include a detailed schedule, which reflects the time frames for completing all work under each of the tasks, indicates the sequence in which the tasks must be completed and identifies significant subcontractor inputs.

4. The service firm shall establish and maintain the necessary programs to be in conformance with all Rhode Island State Laws, and Rules & Regulations pertaining to Equal Employment Opportunity/Affirmative Action.
5. Project Team – The service firm shall employ on the work a qualified project team. The service firm shall designate a representative with authority to act for the service firm. The project representative shall be designated in writing.
6. Subcontracts – The service firm must warrant that it will not subcontract any portion of the tasks or subtasks it is obligated to perform under the service contract agreement without the prior written consent of the Owner. Execution of the said service agreement would constitute such consent concerning any

subcontractor specifically named in the service contract agreement.

7. The service firm shall maintain during the life of the services contract agreement such minimum public liability and property damage insurance as may be required by the General Laws of Rhode Island. The service firm shall also maintain professional liability insurance covering damages resulting from errors or omissions of the service firm. The limit of liability shall not be less than one million dollars (\$1,000,000.00) for the work under this services agreement.

E. Department of Environmental Management Approvals. The Department of Environmental Management will review and approve the following:

- 1) Plan of Study for Facilities Planning Effort;
- 2) Facilities Plan or Update;
- 3) Environmental Information Document/E.I.S.;
- 4) Preliminary Engineering Design Report;
- 5) Value Engineering Study Report for any projects exceeding ten million dollars (\$10,000,000.00);
- 6) Plans and Specifications including final design prior to notice of bid;
- 7) Construction Contracts; and,
- 8) Other approvals specifically required within the Consent Decree and Judgement for Advanced Wastewater Treatment, and all other approvals specifically required by federal or state laws applicable to the bond fund or administration thereof.

F. All approvals issued by the Department of Environmental Management in accordance with the Rules and Regulations for the

Pawtuxet River Water Quality Fund (Ten Million Dollar Bond Issues) shall be considered valid for the purpose of this bond fund

- G. Permits/Approvals/Assents. All other necessary permits/approvals/assents from other State or Federal agencies with jurisdiction over the project must be obtained.
- H. MBE/WBE Requirements. All service firms (if applicable), will be in compliance with the State of Rhode Island Minority Business Enterprise Regulations implementing, in part, Section 1 of the Public Laws of 1986, Chapter 493 (R.I. General Laws, Chapter 37-14.1). Documentation of compliance from the R.I Minority Business Enterprise Commission must be provided to The Department of Environmental Management.
- I. Eligible/Ineligible Costs. Project cost eligibility and reimbursement shall be based on approvals issued by the Rhode Island Department of Environmental Management for all engineering, construction and service agreements. Direct costs associated with procurement, such as advertising and printing shall also be eligible.

9.00 PROCUREMENT PROCESS

- A. Procurement of Planning or Design Services
1. Public Notice of Request for Proposals (RFPs). The municipality must give adequate public notice for competitively negotiated procurement of the services agreement. The notice of a request must state how to obtain associated documents. Requests for Proposals must be written, contain enough information to enable a prospective offeror to prepare a Proposal, contain all evaluation criteria and the relative

importance attached to each, and clearly state the deadline and place to submit Proposals.

2. Evaluation of Proposals. The municipalities must uniformly and objectively evaluate all proposals submitted in response to the Request for Proposals. Municipalities must base their determinations of qualified offerors and acceptable Proposals solely on the evaluation criteria stated in the Request for Proposals.
3. Selection procedure for negotiation and award of subagreement for A/E services. The municipality will use responses to requests for statements of qualifications to determine the most qualified A/E firms or firm. After selecting and ranking the most qualified A/E firm or firms, the municipality will request technical proposals from the offeror or offerors and inform them of the evaluation criteria the municipality will use to rank the proposals. The municipality shall attempt to negotiate fair and reasonable compensation with the A/E firm.
4. Use of same A/E firm during construction. If the municipality is satisfied with the qualifications and performance of the A/E firm who provided design services for the project and wishes to retain that firm or individual during construction of the project, the municipality may do so without further public notice and evaluation of qualifications provided original procurement was in accordance with Sections 1, 2, and 3.
5. If a Municipality decides on a Design-Build Method of construction, the selection of the Design-Build Firm must follow the procurement process of Sections 1, 2 and 3 above.

B. Procurement of Privatization Services

1. Public Notice of Request for Proposals (RFPs). The municipality must give adequate notice for competitively negotiated procurement of the Privatization Services. The notice of request must state how to obtain associated documents. Requests for Proposals must be written, contain enough information to enable a prospective offerer to prepare a proposal, contain all evaluation criteria and the relative importance attached to each, and clearly state the deadline and place to submit proposals.
2. Evaluation of Proposals. The Municipalities must uniformly and objectively evaluate all proposals submitted in response to the Request for Proposals. Municipalities must base their determination of qualified offerors and acceptable proposals solely on the evaluation criteria stated in the request for proposals.
3. Selection procedure for negotiation and award of a Privatization Contract. The municipality will use responses to requests for statements of qualifications to determine the most qualified firm or firms. After selecting and ranking the most qualified firm or firms, the municipality will request technical proposals from the offeror or offerors and inform them of the evaluation criteria the municipality will use to rank the proposals. The municipality shall then attempt to negotiate fair and reasonable compensation for the work and services to be performed under the contract.

C. Procurement of Design-Bid-Build Contracts

1. Formal advertising procurement method. The requirements in this section shall apply to formally advertised construction

contracts in excess of ten thousand dollars (\$10,000.00). Formal advertising means the public solicitation of sealed bids and the award of a construction contract based on a fixed price (lump sum, unit price or a combination of the two) to the lowest responsive, responsible bidder.

2. Formal advertising requires at a minimum:
 - (a) Complete, adequate, and realistic specifications or purchase description of what is required;
 - (b) The opportunity for responsible bidders who are willing and able to compete effectively for the municipalities' business;
 - (c) A procurement that lends itself to the award of a fixed-price contract;
 - (d) That the selection of the successful bidder be made principally on the basis of price.
3. Public notice and solicitation of bids. The municipality shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained or examined.
4. Time for Preparing Bids. The municipality must allow a minimum of thirty days (30), but not more than ninety (90) calendar days between the date the public notice is first published and the date by which bids must be submitted.
5. Adequate bidding documents. The municipality's bidding documents shall include:
 - (a) A complete statement of work to be performed including, where appropriate, design drawings and specifications and the required performance schedule;

- (b) The terms and conditions of the construction contract to be awarded, including payment, delivery schedules, point of delivery and acceptance;
 - (c) A clear explanation of the municipalities' method of bidding and the method of evaluating bid prices, and the basis and method for awarding the construction contract;
 - (d) Any other responsibility requirements or evaluation criteria which the municipality will use in evaluation of bids;
 - (e) The deadline and place to submit the bids.
6. Public opening of bids. The municipality shall publicly open bids at the place, date and time announced in the bidding documents.
7. Award to the lowest, responsive, responsible bidder.
- 1) The municipality shall award all bids in accordance with the methods and criteria in the bidding documents.
 - 2) The municipality shall award a fixed-price construction contract to the lowest, responsive, responsible bidder.
Where specified in the bidding documents, the municipality shall consider factors such as discounts, transportation costs and life cycle costs to determine the low bid only when prior experience of the municipality indicates that it generally accepts such discounts.
 - 3) The municipality may reject all bids only when it has sound, documented business reasons, which are in the best interest of the program.

10.00 PAYMENTS – Payments under these grants are on a reimbursable basis. The municipality must submit source – level documents to prove incurred costs. DEM will review and

certify payment for ninety percent (90%) of the eligible costs. The municipality will certify to the best of their knowledge and belief that:

- A. the billed disbursement costs are in accordance with the terms and conditions of the project:
- B. the reimbursement represents the State share due that has not been previously requested:
- C. that inspections have been performed and all work is in accordance with the terms of the award. Where the municipality has a privatized facility payment will be made by DEM to the municipality and the municipality will then reimburse the privatization firm in accordance with any specific contract arrangements.

11.00 NON-COMPLIANCE – Failure to comply with all terms and conditions of the grant agreement may result in any of the following sanctions:

- A. Withholding of payments
- B. Suspension or termination of the grant for cause
- C. Annulment of the grant
- D. Other appropriate administrative proceeding
- E. Institution of judicial proceedings

12.00 TERMINATION OF THE FUND – Upon the finding of the Director that all monies have been expended, the fund shall be terminated.

The foregoing rules and regulations, after due notice and hearing, are hereby adopted and filed with the Secretary of State this _____ day of April 2001, to become effective twenty (20) days thereafter, in accordance with the provisions of Chapter 46-12, 42-17.1 and 42-35 of the General Laws of Rhode Island of 1956, as amended and Section Article 2, Section 1 of Rhode Island Public Law 90-434.

Director
Department of Environmental Management

Notice given on: 31 January 2001
Hearing held on: N/A
Effective